

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HAJI MOHAMMAD RAMJANBHAI CHIPA

Versus

STATE OF GUJARAT

Appearance:

Shri P.M. Thakkar, Advocate, for the Appellant -
Accused.

Shri M.A.Bukhari, Additional Public Prosecutor, for
the Respondent - State.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 15/10/96

ORAL JUDGEMENT

The judgment and order of conviction passed by
the learned Special Judge of Court No.7 in the City

Sessions Court at Ahmedabad on 27th October 1986 in Special Criminal Case No.13 of 1985 is under challenge in this appeal under Section 374 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Judge convicted the accused of the offence punishable under Section 7 of the Essential Commodities Act, 1955 (the Act for brief) for contravention of Section 3 thereof read with Clause 20 of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 (the Control Order for brief) framed thereunder.

2. The facts giving rise to this appeal move in a narrow compass. According to the prosecution, the appellant herein was the owner of one factory in the name and style of Jay Vijay Folding Works. He wanted to make some construction therein and he therefore applied for in all 740 bags of cement to the Gujarat Small Industries Corporation Ltd. at Ahmedabad. He was allotted 460 bags of cement for the purpose. He purchased this quota of cement in three instalments. He was said to have used 175 bags of cement for making some construction in his factory. He was said to have disposed of in all 250 bags of cement in favour of three different entities. He gave 130 bags of cement to Bhalerao Chemical Industries, 110 bags of cement to S.B.Textiles and 10 bags of cement to Masjid-e-Firdosh some time in October 1982. According to the prosecution, such disposal was in contravention of Clause 20 of the Control Order. On finding such disposal, the necessary inquiry was made and then the Supply Inspector was directed to lodge a complaint against the appellant herein for contravention of Section 3 of the Act read with Clause 20 of the Control Order. Apropos the Supply Inspector filed his complaint on 16th February 1985 before the Special Judge in the City Sessions Court at Ahmedabad. It came to be registered as Special Criminal Case No.13 of 1985. The charge against the respondent as the accused was explained to him for the purpose of recording his plea on 11th June 1986. He did not plead guilty to the charge. Thereupon, he was tried. After recording the prosecution evidence and after recording his further statement under Section 313 of the Code and after hearing arguments, by his judgment and order passed on 27th October 1986 in Special Criminal Case No.13 of 1985, the learned Special Judge of Court No.7 in the City Sessions Court at Ahmedabad convicted the appellant - accused of the offence punishable under Section 7 of the Act for contravention of Section 3 thereof read with Clause 20 of the Control Order and sentenced him to simple imprisonment for three months and fine of Rs.100 in default simple imprisonment for 15

days. The aggrieved accused has thereupon invoked the appellate jurisdiction of this court under Section 374 of the Code for questioning the correctness of his conviction and the sentence imposed on him by the learned trial Judge.

3. The prosecution has brought on record sufficient documentary evidence to show that the appellant - accused purchased in all 460 bags of cement in three instalments. The delivery orders in that regard are at Exhs. 25, 27 and 29 on the record of the trial court. The authority letters issued by the appellant - accused for the purpose are also at Exhs. 26, 28 and 30 on the record of the trial court. The prosecution has also brought on record the recommendation made by the General Manager of the District Industries Centre at Ahmedabad for allotment of cement in favour of the appellant - accused. Its copy is at Exh. 34 on the record of the trial court.

4. According to the prosecution, cement was allotted to the appellant - accused for the construction purposes in his factory. Learned Advocate Shri Thakkar for the appellant - accused has submitted that, in order to fasten criminal liability to the accused for contravention of Section 3 of the Act read with Clause 20 of the Control Order, the prosecution has to prove that allotment of cement was for some specific purpose and that the appellant- accused did not use it for that very purpose and disposed of in favour of someone else without using it for that purpose. In this case, runs the submission of learned Advocate Shri Thakker for the appellant - accused, the prosecution has not been able to establish beyond reasonable doubt the purpose for which 460 bags of cement were allotted to the present appellant. As against this, learned Additional Public Prosecutor Shri Bukhari for the respondent - State has submitted that the prosecution has brought on record enough material to show and to suggest that 460 bags of cement were allotted to the appellant - accused for the purpose of making construction in his factory.

5. The document at Exh.34 is recommendation made by the General Manager of the District Industries Centre at Ahmedabad recommending allotment of the required cement in favour of the present appellant. The very heading shows that recommendation was made for construction work in the present appellant's factory. The name of the appellant's factory and its address are also mentioned therein. The present appellant's statement was also recorded by certain officers in the office of the Director, Civil Supplies at Gandhinagar on 19th January

1983 at Exh.42 on the record of the trial court. Therein he has clearly admitted that he wanted cement for construction on the first floor and of the compound wall with respect to his factory. There is on record the statement of the appellant - accused at Exh.45 on the record of the trial court. Therein also he has clearly stated that he applied to the Industries Commissioner for allotment of 740 bags of cement for his factory purposes. Another statement of his is at Exh.46 on the record of the trial court. Therein also he has admitted to have applied for 740 bags of cement for some new construction in his factory. In view of this overwhelming evidence on record, there is no escape from the conclusion that the appellant-accused needed 740 bags of cement for making some construction in his factory. The evidence on record is clear to the effect that the appellant was allotted 460 bags of cement for the purpose. That becomes clear from the oral testimony of Prosecution Witness No.4 at Exh.23 on the record of the trial court. It has clearly been stated in para 4 thereof that the appellant herein was allotted 460 bags of cement by the Gujarat Small Industrial Corporation Ltd. The inference from this evidence on record is clear to the effect that the appellant - accused was allotted 460 bags of cement for the purpose of his construction in the factory.

6. The terms of the delivery orders at Exhs. 25, 27 and 29 make it clear that the purchaser of cement (the appellant herein) was required to use the cement so purchased only for the purpose for which it was allotted. In that view of the matter, it is difficult to accept the submission that the prosecution has not been able to prove beyond reasonable doubt that the appellant herein was allotted 460 bags of cement for the purpose of some new construction in his factory.

7. At this stage, it is necessary to look at the further statement of the appellant - accused under Section 313 of the Code. In reply to the last question before hearing him on the question of sentence, he has clearly admitted that he got 460 bags of cement out of which he used 175 bags of cement for some construction in his factory. It thus becomes clear even from his aforesaid statement under Section 313 of the Code that he was allotted 460 bags of cement for making construction in his factory. In that view of the matter, there is no escape from the conclusion that the prosecution has been able to prove beyond reasonable doubt the purpose for which 460 bags of cement was allotted to the appellant and purchased by him vide the documents at Exhs. 25 to 30.

8. It has come on record that the appellant- accused gave 130 bags of cement to Bhalerao Chemical Industries, 110 bags of cement to S.B. Textiles and 10 bags of cement to Masjid-e-Firdosh. The statement of Bhailalbhai Kishanbhai Bhalerao as the owner of Bhalerao Chemical Industries was recorded on 27th September 1983 and he admitted therein to have taken 130 bags of cement on loan from the present appellant. The statement of Liyakhat Ali Bashirbhai as the owner of S.B.Textiles was recorded on 5th October 1983 and he admitted therein to have received 110 bags of cement from the appellant herein on loan. The statement of one Hakim Abdul Karim Qureshi was recorded on 29th September 1983 and he admitted to have received 10 bags of cement from the appellant. Their respective statements are at Exhs. 18, 20 and 19 respectively on the record of the trial court. The authors of the first two statements at Exhs. 18 and 20 have been examined as prosecution witnesses at Exhs. 37 and 35 respectively. In their chief- examination they have admitted them to be their own statements. In cross-examination they have tried to improve their version by saying that cement was given to them for preservation and not by way of loan. So far as the witness at Exh.37 is concerned, he is stated to have given receipt of in all 130 bags of cement received from the appellant herein on 20th October 1982. It is at Exh.38 on the record of the case. Therein he has clearly mentioned that he received the said 130 bags of cement from the appellant herein by way of loan to be returned as and when needed by the appellant herein. This receipt was passed on 20th October 1982. That was much prior to his statement recorded on 27th September 1983. In that view of the matter, it is difficult to accept the submission that cement given to Bhalerao Chemical Industries through witness at Exh.37 was only for the purpose of its preservation and not for any other purpose.

9. So far as the witness at Exh.35 is concerned, he did not give any such thing in writing. He has however admitted that he obtained 110 bags of cement from the appellant herein at the time when he was required to make some construction in his factory. He has clearly admitted in his chief-examination that he has used the cement received from the appellant herein for the purpose of construction in his factory. In that view of the matter, the statement in his cross- examination that the cement received from the appellant herein was only for the purpose of preservation thereof against its uselessness on account of accumulation of rainy water in

the factory of the appellant herein pales into insignificance.

10. In view of the aforesaid evidence on record, the conclusion is quite clear that the appellant herein parted with 240 bags of cement in favour of the witnesses at Exhs. 35 and 37 by way of loan. Both the witnesses have stated in their respective oral testimonies that they did not pay any money for the respective bags of cement received from the appellant herein and both of them returned the bags of cement to him. The transaction was practically in the nature of loan.

11. Learned Advocate Shri Thakkar for the appellant has submitted that to give cement on loan would not amount to its disposal within the meaning of Clause 20 of the Control Order. He has further submitted that lending cement to some other parties for temporary use would not amount to non-user of cement by the appellant herein for the purpose for which he was allotted 460 bags of cement.

12. I am unable to agree with the aforesaid submission urged before me by learned Advocate Shri Thakkar for the appellant for the simple reason that the Control Order was framed with a view to providing fair distribution inter alia of cement at the relevant time. Cement was a controlled essential commodity at the relevant time. It was available to consumers only against permit and that too for use for some specific purpose. In that context, Clause 20 was incorporated in the Control Order. It has been admitted by the witness at Exh.35 that he needed cement for construction in his factory and he had no permit and he wanted cement for the purpose and he got 110 bags of cement from the appellant herein for the purpose and he used that cement for making construction in his factory. It thus becomes clear that what the witness at Exh.35 could not do directly he was permitted to do indirectly by the appellant herein. So was the case with the witness at Exh.37. He has also admitted to have used 130 bags of cement received from the appellant herein for making construction in his factory. The construction made by him is eloquently set out in his statement at Exh.18 on the record of the trial court. He had also no permit for the purpose. In his case also what he could not do directly he was permitted to do indirectly by the appellant herein. Though the transaction was in the nature of loan, the appellant was guilty of allowing the aforesaid two persons to use the cement allotted to him which was required to be used by him for the specific purpose of making construction in his factory. If he wanted to lend cement to some person

or persons, he was required to approach the concerned authority for the purpose under the proviso to Clause 20 of the Control Order. He has certainly not done so. In that view of the matter, there is no escape from the conclusion that the appellant was guilty of contravention of Clause 20 of the Control Order.

13. The word "Disposal" occurring in Clause 20 of the Control Order has not been defined. Its meaning will have to be ascertained from dictionaries. The Concise Oxford Dictionary in its Eighth Edition of 1990 defines it inter alia to mean: "1. The act or an instance of disposing of something; 2. The arrangement, disposition, or placing of something; 3. Control or management (of a person, business etc.)". The Oxford Advanced Learner's Dictionary of Current English in its Fourth Edition with Fourth Impression in 1994 defines it to mean: "Action of getting rid of something". It thus becomes clear that the word "disposal" has also the meaning of "the arrangement, disposition or placing of something". After consuming 175 bags of cement out of 460 bags of cement, some excess cement bags were placed at the disposal of the witnesses at Exhs.35 and 37 for their use and 10 bags to Masjid-e-Firdosh.

14. 'Disposal' is a noun derived from the word "to dispose". One of its meaning is to 'place suitably or in order'. Another meaning is to 'deal with'. By giving cement to the witnesses at Exhs. 35 and 37 for their use though on loan, it would amount to cement being disposed of by the appellant herein in view of the aforesaid dictionary meaning of the word "to dispose".

15. At this stage, it would be worthwhile to consider the expression "at one's disposal". It means, according to the Concise Oxford Dictionary, available for one's use and subject to one's orders and decisions. Practically the same meaning is assigned to that expression in the Oxford Advance Learner's Dictionary. 130 bags of cement were placed at the disposal of the witness at Exh.37 for his use and 110 bags of cement were placed at the disposal of the witness at Exh.35 for his use though by way of loan.

16. The word "loan" is defined in the Concise Oxford Dictionary inter alia to mean "1. Something lent especially a sum of money to be returned normally with interest and 2. the act of lending or state of being lent". It is defined in the Oxford Advance Learner's Dictionary to mean practically the same thing. It would mean that something is given by way of loan by someone to

some other person for some temporary period and purpose to be returned later on. So far as the appellant herein is concerned, he has allowed temporary use of cement by the witnesses at Exhs. 35 and 37 though by way of loan. These witnesses could not have got cement without obtaining the necessary permit under the Control Order. They could manoeuvre and manipulate to do their job with the help of the present appellant. Even otherwise, if the word "loan" is taken to mean lending something to someone for temporary use, it would amount to temporary disposal within its dictionary meanings as referred to hereinabove. The word "disposal" used in Clause 20 of the Control Order would include temporary disposal as well as it is not preceded by any adjective like "permanent". In that view of the matter, the appellant herein can be said to have disposed of 240 bags of cement in favour of the witnesses at Exhs. 35 and 37.

17. It has come on record that 10 bags of cement were given to Masjid-e-Firdosh. This position becomes clear from the statement of the recipient thereof at Exh.19 on the record of the trial court. It has clearly been mentioned therein that 10 bags of cement were received from the appellant herein by way of donation for the purpose of construction of a water tank, a bathroom and urinals in the Masjid. Donation would certainly amount to disposal in any case. Thereby the donor parts with possession of the thing owned by him for good. It is not temporarily given. It can never be equated with any loan transaction. In that view of the matter, there is no escape from the conclusion that the appellant herein is guilty of disposal of at least 10 bags of cement in favour of Masjid-e-Firdosh. He has therefore made breach of Clause 20 of the Control Order and thereby contravened Section 3 of the Act and has thus incurred the penal liability under Section 7 of the Act.

18. The Control Order is made under Section 3 (1) (d) of the Act. The minimum punishment prescribed under Section 7 is imprisonment for three months and the term of imprisonment can extend to seven years and the offender would also be liable to fine. The learned trial Judge appears to have dealt with the appellant herein for the purpose of sentence quite leniently even after convicting the accused of the offence with which he was charged.

19. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of conviction and sentence passed by the learned trial Judge calls for no interference by this court in this appeal.

20. In the result, this appeal fails. It is hereby dismissed. The interim relief stands vacated. At the oral request of learned Advocate Shri Thakkar for the appellant, the order of vacating the interim relief is stayed for a period of 12 weeks from today with a view to enabling the appellant - accused to question the correctness of this judgment of mine by means of an appropriate proceeding before an appropriate forum.

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